

**WASHINGTON STATE DEPARTMENT OF EARLY LEARNING
2007-09 EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM CONTRACT**

SPECIAL TERMS AND CONDITIONS

SECTION 1 – INTRODUCTION

This Contract, entered into by _____, referred to in this Contract as the CONTRACTOR, and the Department of Early Learning, referred to in this agreement as DEL, specifies that:

- DEL has the responsibility, under Revised Code of Washington (RCW) 43.215.400-450 and Washington Administrative Code (WAC) chapter 170-100, to provide early childhood education and assistance programs serving eligible children and families.
- DEL has selected the CONTRACTOR to deliver comprehensive ECEAP services, within the required components of the ECEAP Performance Standards and WAC chapter 170-100, which include administration; early childhood education; health, safety, and nutrition; family support; and parent involvement. These services shall be targeted to eligible children and their families to help them succeed in school and life.

Both Parties agree to the following terms and conditions.

SECTION 2 – DEFINITIONS

Terms used throughout this Contract are defined below:

"CLIENT" means an individual receiving service under this Contract.

"CONTRACTOR" means an agency, firm, organization, provider, individual, or other entity performing services under this Contract. It shall include any subcontractor retained by the CONTRACTOR, as permitted under the terms of this Contract.

"DEPARTMENT" means the Department of Early Learning of the state of Washington, any division, section, office, unit, or other entity of DEL, or any of the officers or other officials lawfully representing DEL.

"ECEAP" means the Early Childhood Education and Assistance Program, administered by the Department of Early Learning. ECEAP is a comprehensive, family-focused school readiness program designed to help eligible children and their families succeed in school and life.

"PERSONAL INFORMATION" means information identifiable to any person, including, but not limited to, a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

"SUBCONTRACTOR" means an individual or entity who, is not an employee of the CONTRACTOR and is performing all or part of the services under this Contract through a written agreement with the CONTRACTOR.

The "PARTIES" means DEL and the CONTRACTOR, as a party to this Contract.

"FUNDED ENROLMENT LEVEL (FEL)" is the number of slots for which each CONTRACTOR is funded. Each slot serves one child at a time.

SECTION 3 – ENTIRE AGREEMENT

This Contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or be binding. The Exhibits to this Contract are as follows:

EXHIBIT A	Budget Detail Worksheet
EXHIBIT B	General Terms and Conditions
EXHIBIT C	ECEAP Performance Standards

SECTION 4 - CONFORMANCE

If any provision of this Contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

SECTION 5 – CONTRACT PERIOD

The effective date of this Contract shall be July 1, 2008. This Contract shall expire on July 31, 2009. Eligible expenses must be expended and all work must be completed by June 30, 2009. The CONTRACTOR has until July 31, 2009 to send in all the required reports.

Some rights and obligations, due to their nature, remain in force beyond the contract expiration date. These include, but are not limited to:

- Section 12 – Equipment Purchases and Ownership.
- Section 14 – Required Reports.
- Section 17 – Safeguarding of Information.
- Hold Harmless section (General Terms and Conditions).
- Records, Documents, and Reports section (General Terms and Conditions).

The CONTRACTOR must execute written service area agreements with neighboring Head Start and ECEAP programs. These agreements must include:

- Plan for co-operative assessment of community needs and strengths.
- Enrollment and service area boundaries for each CONTRACTOR.
- Process of referral of families between agencies.
- Joint staff and parent training opportunities - if applicable.
- Commitment to communication and problem resolution.

A copy of the agreements must be approved by DEL prior to Contract execution.

SECTION 6 - ASSURANCES

The CONTRACTOR shall comply with all applicable current federal, state, and local laws, rules, and regulations.

SECTION 7 – ORDER OF PRECEDENCE

In the event of conflicting provisions within this Contract, the conflict will be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations.
2. Special Terms and Conditions contained in this Contract.
3. General Terms and Conditions contained in this Contract.
4. Exhibits or other documents incorporated by reference.

SECTION 8 – STATEMENT OF WORK

The CONTRACTOR shall provide early childhood education and assistance services that are in compliance with the terms and conditions of this Contract, and the 2008 ECEAP Performance Standards, and aligned with the Washington State Early Learning and Development Benchmarks.

Approval from DEL must be obtained before any change is implemented in the CONTRACTOR’S service delivery system, site location, enrollment level, and service area.

Contract program and fiscal performance will be monitored and evaluated monthly by the assigned Department staff based on, but not limited to, child enrollment forms, monthly program activity reports, and monthly requests for reimbursement. At least once annually, DEL shall request back-up documentation of monthly expenditures. Department staff will also monitor and evaluate program and fiscal performance during on-site visits and program reviews.

DEL shall have a perpetual right to use the data submitted by the CONTRACTOR in the ECEAP Management System (EMS), for reports, program outcomes studies, and planning purposes, while maintaining confidentiality of the identity and personal information of individual children and families.

All publications and marketing materials intended for an audience outside of your agency, and partially or fully funded under this contract, will include the Department of Early Learning logo and include the words “funded by DEL” or “funded in partnership with DEL.” The full-color or black-and-white logo must appear in entirety, without any modification.

The CONTRACTOR certifies that work to be performed under this Contract does not duplicate any work to be charged against any other contract, subcontract, or other funding source.

Exhibit B contains the General Terms and Conditions governing work to be performed under this Contract, the nature of the working relationship between DEL and the CONTRACTOR, and obligations of both parties.

SECTION 9 – FUNDING

DEL shall pay an amount not to exceed _____ for costs incurred for activities in the statement of work in Exhibit A. The funded enrollment level (FEL) shall be _____.

DEL reserves the right to redistribute funded enrollment levels (FEL) if sites are unable to maintain full enrollment or impact enrollment of neighboring programs.

As stated in RCW 43.215.415, funds obtained by CONTRACTOR through voluntary grants or contributions from individuals, agencies, corporations, or organizations may be used to expand or enhance preschool programs, as long as ECEAP Performance Standards are met. Funds must not be used to supplant federally-supported Head Start or other state-supported early childhood programs.

SECTION 10 – USE OF FUNDS

Allowable use of state ECEAP funds shall include the following:

A. Administrative Costs

Costs incurred for ECEAP administration, including organization-wide planning, coordination, and general program direction; accounting and auditing; purchasing; personnel and payroll functions; administrative training and travel; and occupying, operating, and maintaining the space utilized for these purposes. Costs do not include the direct delivery of educational, social, and health services.

Administrative costs shall not exceed 15 percent of the annual base funding of the program budget identified in this Contract.

B. Operational Costs

Costs incurred for the delivery of client services in the areas of education; family support; parent involvement; social services; nutrition; and medical, dental, and mental health. Costs also include personnel (salaries and benefits), facilities where services are delivered (or used by service delivery staff), supplies, training, travel, and other associated costs.

ECEAP funds shall be used as dollars of last resort for medical, dental, nutrition, and mental health services.

C. One-Time Funds:

One-time funding is granted as may be available and as determined by DEL. One-time funds shall be used for costs of a one-time nature that promote quality, target safety improvements and correction of items in self-assessments or program reviews, and implement ECEAP Performance Standards. One-time funding costs are not considered part of continuing ECEAP funding.

D. Travel:

If the CONTRACTOR does not have its own travel policies, expenditures for travel, meals, and lodging shall comply with the state of Washington's travel regulations, or federal travel regulations if travel occurs outside the state of Washington.

SECTION 11 – REIMBURSEMENT PROCESS

Allowable program expenditures shall be reimbursed upon approval of an invoice and submittal of program activity and child enrollment data for the month in which reimbursement is being requested. The CONTRACTOR shall use the Monthly Expenditure Report and Request for Reimbursement (Voucher) Form and submit requests within 15 days following the month in which costs were incurred. Payment shall be considered timely if received by the CONTRACTOR within 30 business days after DEL receives the invoice.

DEL shall make no payments in advance of services to be provided under this Contract.

SECTION 12 – EQUIPMENT PURCHASES AND OWNERSHIP

Title to equipment purchased with ECEAP funds is held by the CONTRACTOR. The CONTRACTOR is authorized to sell or dispose of equipment that is no longer useful, but the CONTRACTOR must request approval from DEL prior to selling or disposing of equipment, in the event DEL chooses to recapture the equipment. The CONTRACTOR shall use the income from any sale to enhance ECEAP services.

CONTRACTOR must:

- Ensure that equipment purchased with ECEAP funds is used for ECEAP services.
- Request approval from DEL before purchasing equipment of \$5,000 or greater with ECEAP funds. Purchase requests will be considered until June 10th of each fiscal year provided the item can be delivered by June 30th of the current fiscal year.
- Maintain inventory records.

SECTION 13 –BUDGET REVISIONS

The CONTRACTOR'S Budget Detail Sheet is provided as Exhibit A included in this Contract. Proposed budget revisions shall be submitted to DEL electronically on the ECEAP Management System (EMS). The CONTRACTOR shall complete a budget revision for any of the following proposed budget changes:

1. Line item transfers of greater than 10 percent of the total amount of the Operations category or 30% of the total amount of the Administration category within each fiscal year.
2. Proposed transfer of any funds from Operations to Administration category.
3. Proposed transfer of any funds out of, or into, the Building Alterations line item.

Budget revisions shall not be effective unless approved by DEL.

SECTION 14 – REQUIRED REPORTS

The CONTRACTOR shall submit required reports by the due dates specified by DEL. These reports include, but are not limited to:

REPORT	DATE DUE
1. Monthly Expenditure Report and Request for Reimbursement (Voucher)	By the 15 th of the month following the month in which costs were incurred, except for the month of June (see below). The CONTRACTOR submits Vouchers on the ECEAP Management System (EMS), and then sends a signed hardcopy.
2. June Monthly Expenditure Report and Request for Reimbursement	July 10 th of each year, or as instructed by DEL
3. Child Enrollment Form (CEF)	By the 15 th of the month on EMS following the month the child enrolled in or exited the program and updated as changes occur
4. Program Activity Form (PAF)	By the 15 th of the month on EMS following the month services were provided
5. Program Information Form (PIF)	Entered into EMS as part of the ECEAP Service Delivery Plan and updated as changes occur
6. Subcontractor Information Form (SIF)	Entered into EMS as part of the ECEAP Service Delivery Plan and updated as changes occur
7. Self-Assessment	June 30 th of each fiscal year
8. Devereux Early Childhood Assessment (DECA)	June 30 th of each fiscal year
9. Certificate of Coverage or Letter of Coverage for commercial insurance carriers, self-insured/liability pools, or self-insured risk management programs	By September 30 th of the contract effective date. CONTRACTOR shall submit renewal certificate as appropriate during the term of the Contract.
10. Copy of most recent audit report	On completion of audit report, with a minimum of one per Contract period.

The CONTRACTOR shall be obligated to submit required reports on the dates due even after the expiration of the Contract period, during the transfer of obligations to another Contractor, or upon termination of the Contract for any reason.

SECTION 15 – INSURANCE

The CONTRACTOR shall provide insurance coverage as described in this section. The intent of the insurance is to protect the state should there be any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract.

The insurance shall be issued by an insurance company authorized to do business within the state of Washington, and, except for Professional Liability or Errors and Omissions Insurance, shall name the state of Washington, its agents, and employees, as additional insured under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to notify DEL 30 days before any insurance cancellation.

The CONTRACTOR shall submit to DEL a certificate of insurance, which outlines the coverage and limits defined in this section, as described in the “Required Reports” section of this Contract.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability – In the event that services delivered pursuant to this Contract involve the use of vehicles owned or operated by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance – The CONTRACTOR shall maintain Professional Liability or Errors and Omissions Insurance. The CONTRACTOR shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all program activities by the CONTRACTOR and licensed staff employed or under Contract to the CONTRACTOR. The state of Washington, its agents, and employees need *not* be named as additional insured under this policy.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from DEL, the CONTRACTOR may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from DEL, the CONTRACTOR shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. If the CONTRACTOR is participating in joint risk pools, the CONTRACTOR shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. For the term of the Contract, DEL reserves the right to unilaterally amend the Contract on 30 days notice to increase the minimum liability limits for the above coverage. The state of Washington, its agents, and employees need *not* be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

SECTION 16 – DSHS DATA SHARING AGREEMENT

DEL will annually provide confidential data on potentially eligible children, obtained from the Department of Social and Health Services (DSHS), to the CONTRACTOR. This data includes child birthdates and mailing addresses, and is to be used solely for ECEAP recruitment and enrollment purposes.

Access to this confidential data shall be limited to authorized staff whose duties specifically require access to such data. The CONTRACTOR shall ensure that all staff with access to the data sign a Notice of Non-Disclosure Form and submit a copy to DEL.

The CONTRACTOR shall ensure protection of data from unauthorized physical or electronic access and that documents generated from this data are properly secured. The CONTRACTOR shall also ensure unused data in electronic or printed form is properly destroyed so that it cannot be accessed by unauthorized individuals and the data cannot be recovered.

Other confidential information maintained by the CONTRACTOR shall be subject to the Safeguarding of Information section of this Contract.

The CONTRACTOR shall ensure these guidelines are included in any subcontract they may enter into for the provision of ECEAP services. The CONTRACTOR shall be responsible for the acts and omissions of any of their subcontractors.

SECTION 17 – SAFEGUARDING OF INFORMATION

Personal information acquired or used in connection with this Contract shall be used solely for the purposes of this Contract. The CONTRACTOR and its subcontractors agree not to release personal information to unauthorized persons without the written consent of DEL or as provided by law. The CONTRACTOR agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information. DEL reserves the right to monitor, audit, or investigate the use of personal information acquired or used by the CONTRACTOR. The CONTRACTOR agrees to indemnify and hold DEL harmless for any damages related to the CONTRACTOR'S unauthorized use of personal information.

The CONTRACTOR must immediately report any suspected Information Technology (IT)-related theft, fraud, or misuses of resources, or breaches of security. This includes actual or attempted theft of hardware or compromised data, login ID's, or passwords. The CONTRACTOR shall report the incident to DEL's Network Administrator, at (360) 480-3398 or via e-mail at security@del.wa.gov, regardless of the date and time of the incident. Reports shall include the specific nature of the incident, including the date and time.

Whenever there has been an IT-related theft, fraud, misuse of resources, or breaches of security, DEL may, at its discretion, conduct an investigation. The objectives of this investigation will be to determine how the incident occurred, who is responsible, and prevent recurrence. The CONTRACTOR must obtain and safeguard any evidence relating to suspected incidents to assist and otherwise cooperate in the investigation.

SECTION 18 - SUBCONTRACTING

The CONTRACTOR, or Subcontractor, may subcontract ECEAP services upon notification of DEL. A subcontract shall not release or reduce the liability of the CONTRACTOR to DEL for any breach in the performance of the CONTRACTOR'S duties. The CONTRACTOR is responsible to DEL for compliance of the Subcontractor with the ECEAP Performance Standards and the terms of this Contract.

All subcontracts must be in writing and include:

- The number of children to be served.
- The services to be provided by the Subcontractor and CONTRACTOR.
- Acknowledgement that the Subcontractor must comply with all ECEAP Performance Standards and terms of this Contract.
- A list of reports or other documents that the Subcontractor must submit to the CONTRACTOR.

SECTION 19 - APPROVAL

This Contract must be approved in writing by DEL's authorized representative and shall not be binding until both Parties have approved it. The Contract may be altered, amended, or waived only by a written amendment executed by both Parties.

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2007-09 EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM CONTRACT**

GENERAL TERMS AND CONDITIONS

AMERICANS WITH DISABILITIES ACT OF 1990, PUBLIC LAW 101-336, ALSO REFERRED TO AS THE “ADA” 28 CFR PART 35 - The Contractor must comply with the ADA. The ADA provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT – This Contract, or any claim arising under this Contract, shall not be transferred or assigned by the Contractor without prior written consent of the Department.

CHANGE IN STATUS – If there are substantive changes in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, the Contractor agrees to notify the Department of the change. The Contractor shall provide notice as soon as possible, but no later than 30 days after the change takes effect.

CHANGES AND MODIFICATIONS – The Department may, at any time, by written notification to the Contractor, make changes within the general scope of the services to be performed under the Contract. If the Contractor agrees to such changes, a written contract amendment shall be executed by both parties. An equitable adjustment in cost or period of performance, or both, may be made if required by the change. Any claim for adjustment in price or period of performance must be received within 30 days of the Contractor’s receipt of the change notice. The Department may, however, receive and act upon any such claim at any time prior to final payment under the Contract.

Failure to agree to any adjustment made under this section may be reviewed as provided in the "Disputes" section of this Contract. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

CONFLICT OF INTEREST – The Department may terminate this Contract, by written notice to the Contractor, if it finds, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of or performance under this Contract.

In the event this Contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor. The rights and remedies of the Department provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Department makes any determination under this section may be reviewed as provided in the "Disputes" section of this Contract.

COVENANT AGAINST CONTINGENT FEES – The Contractor certifies that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Department shall have the right, in the event of breach of this section by the Contractor, to annul this Contract without liability or to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

DISALLOWED COSTS - The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

DISPUTES – Except as otherwise provided in this Contract, when a bona fide dispute arises between the parties, and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the Department, a representative appointed by the Contractor, and a third party mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

GOVERNING LAW – This Contract shall be construed and interpreted in accordance with the laws of the state of Washington. The venue of any action brought under this Contract shall be in Superior Court for Thurston County.

HOLD HARMLESS – To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington and its agencies, officials, agents, and employees from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. The Contractor's obligations to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim or incident arising out of the Contractor's or any Subcontractor's performance or failure to perform the contract. The contractor's obligation shall not be eliminated or reduced by any actual or alleged concurrent negligence of the state of Washington and its agencies, officials, agents, and employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the state of Washington and its agencies, officials, agents, or employees.

INDEPENDENT CAPACITY – This Contract creates an independent Contractor relationship between both parties. The Contractor, and its employees or agents performing under this Contract, are not employees or agents of the Department. The Contractor will not hold itself out as, nor claim to be, an officer or employee of the Department or of the state of Washington. The Contractor will not make any claim of right, privilege, or benefit that would accrue to such employee under law.

INDUSTRIAL INSURANCE COVERAGE – The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Department may collect from the Contractor the full amount payable to the Industrial Insurance accident fund and transmit the amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING AND ACCREDITATION STANDARDS – The Contractor shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements necessary in the performance of this Contract.

NONDISCRIMINATION – The Contractor shall comply with all federal and state nondiscrimination laws, regulations, and policies. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded or terminated, in whole or in part, and the Contractor may be declared ineligible for further contracts with the Department. The Contractor shall, however, be given a reasonable time in which to correct this noncompliance. Any dispute of fact may be resolved in accordance with the "Disputes" section of this Contract.

OVERPAYMENTS AND ASSERTION OF LIEN – In the event that the Department establishes overpayments or erroneous payments made to the Contractor under this Contract, the Department may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to the Department.

RECAPTURE PROVISIONS – In the event that the Contractor expends funds under this Contract in violation of state laws and/or provisions of this Contract, the Department reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance. Such right of recapture shall exist for a period not to exceed six years following Contract termination. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. In the event that the Department is required to institute legal proceedings to enforce this provision, the Department shall be entitled to recapture its costs, including reasonable attorney's fees.

RECORDS, DOCUMENTS, AND REPORTS – The Contractor shall maintain all books, records, documents, data, and other evidence relating to this contract and performance of the services described in it, including, but not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. The Contractor shall retain such records as described in ECEAP Performance Standard Section G. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review, or audit by the Department, the Office of the State Auditor, and federal and state officials authorized by law, regulation, or agreement.

If any litigation, claim, or audit is started before the expiration of the retention period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

RIGHT OF INSPECTION – The Contractor shall provide right of access to its facilities to the Department at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract. All inspections and evaluations shall be performed in a way that will not unduly interfere with the Contractor's conduct of business.

SEVERABILITY – The terms and conditions of this Contract are severable. If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms and conditions of this Contract.

TERMINATION DUE TO CHANGE IN FUNDING – In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way during the contract period, the Department may terminate the contract under the "Termination for Convenience" clause without advance notice. At the Department's discretion, such termination is subject to renegotiation, under the new funding limitations and conditions.

TERMINATION FOR CONVENIENCE – Except as otherwise provided in this Contract, the Department may, by ten days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. If this Contract is so terminated, the Department shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION FOR DEFAULT – The Department may terminate this Contract for default, in whole or in part, by written notice to the Contractor if the Department has a reasonable basis to believe that the Contractor has:

- Failed to meet or maintain any requirement for contracting with the Department.
- Failed to ensure the health or safety of any client for whom services are being provided under this Contract.
- Failed to perform under or otherwise breached any term or condition of this Contract.
- Violated any applicable law or regulation.

If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.

TERMINATION PROCEDURE – Upon termination of this Contract, the Department shall pay the Contractor the agreed upon price for:

- (a) Completed work and services.
- (b) Partially completed work and services.
- (c) Other property or services that are accepted by the Department.
- (d) The protection and preservation of any property accepted by the Department, unless the termination is for default, in which case the Department shall determine the extent of its liability.

Failure to agree with such determination shall be a dispute covered under the "Disputes" section of this Contract.

The Department may withhold from the Contractor's payment a sum necessary to protect the Department against potential loss or liability.

After receipt of a termination notice, except as otherwise directed by the Department, the Contractor shall:

- Stop work under the agreement on the date and to the extent specified in the notice.
- Place no further orders or subcontracts for materials, services, or facilities, except as necessary to complete work not terminated.
- Complete work not terminated by the Department.
- Assign to the Department the rights, titles, and interest of the Contractor under any orders and subcontracts. The Department has the right to settle or pay any claims arising out of the termination of such orders and subcontracts.
- Settle all outstanding liabilities and claims arising out of termination of orders and subcontracts, with the approval of the Department to the extent required. This approval shall be final for all the purposes of this section.
- Transfer title and deliver any property, which, if the Contract had been completed, would have been required to be furnished to the Department.
- Take necessary action to protect and preserve any property related to this agreement in which the Department may acquire an interest.

The rights and remedies of the Department provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

WAIVER OF DEFAULT – Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Waiver shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by the Department.